



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-176 (Commercial deep sea fishing--Commercial passenger fishing--Diesel fuel.)**

Date last reviewed: **July 1998**

Reviewer: **Mark Mullin**

Date current review completed: **April 30, 2003**

Briefly explain the subject matter of the document(s): **WAC 458-20-176 (Rule 176) provides tax reporting information for persons engaged in commercial deep sea fishing. The rule provides specific information about the retail sales tax exemption provided by RCW 82.08.0262 for sales of watercraft, including component parts thereof, which are primarily for use in conducting commercial deep sea fishing operations; and for charges for labor and services rendered in respect to the constructing, repairing, cleaning, altering, or improving of such property. Likewise, the rule provides specific information about the use tax exemption provided by RCW 82.12.0254 for the use of watercraft, including component parts thereof, which are primarily for use in commercial deep sea fishing operations. Lastly, the rule provides information about the sales and use tax exemptions for the sale or use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing operations.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
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X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**Chapter 367, Laws of 2002, extended the use tax to the cleaning, altering, or improving, among other things, of tangible personal property. RCW 82.12.0254 was amended by section 3, chapter 5, Laws of 2003, to provide a use tax exemption for the use of these services when performed on watercraft used primarily in commercial deep sea fishing operations. The 2003 legislation mirrors the retail sales tax exemption for these services. These statutory changes should be incorporated into Rule 176.**

**The following WTDs issued subsequent to the previous review of this rule contain information that should be incorporated into the rule:**

- **Det. No. 98-226, 18 WTD 316 (1999) (an Alaskan fishing corporation, whose principal offices are located in Washington, protests the Audit Division’s denial of its refund claim).**
- **Det. No. 98-178, 18 WTD 149 (1999) (a commercial deep sea fishing business appeals instructions received from the Department that retail sales tax applies to its purchase and repair of custom-made trawl nets).**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**This rule could be rewritten and reorganized in a more clear and concise manner. To this end, the sample exemption certificates in the rule should be eliminated and replaced by a**



reference to the Buyers' Retail Sales Tax Exemption Certificate. Also, the definition section could be eliminated and the definitions incorporated throughout the rule as appropriate, possibly in a question-and-answer format.

A reference to WAC 458-20-135 should be added to the rule informing readers where they can obtain information on the applicability of the extracting B&O tax on persons who catch fish in Washington waters. A reference to chapter 458-17 WAC should be added to the rule informing readers where they can obtain information about the personal property tax on commercial vessels, including vessels used exclusively for commercial fishing purposes. In addition, the rule should contain a statement that in addition to the B&O tax, commercial fishers may be liable for the excise tax on enhanced food fish.

Subsection (5)(b) of this rule provides that "[t]he use tax does apply upon the actual use within this state of all other types of tangible personal property purchased at retail and upon which the sales tax has not been paid . . . except on diesel fuel as noted below." (Underlining added.) While the term "actual use" is used in RCW 82.08.0261, its use in Rule 176 seems inappropriate. Use tax generally applies to the "use" of tangible personal property as a consumer where sales tax has not been paid. The term "use" in chapter 82.12 RCW is broader than the term "actual use." See RCW 82.12.010(3). As a result, the term "actual use" in the rule should be replaced simply with the term "use."

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

- *Trident Seafoods Corp. v. Dep't of Rev.*, BTA Docket No. 25662 (1984) (whether use tax/deferred sales tax is due on the purchase of tangible personal property delivered in Washington).
- *Anchor Boats, Inc. v. Dep't of Rev.*, BTA Docket No. 16991 (1978) (whether the taxpayer is liable for retail sales tax assessed on the sale of three boats to residents of other states).



Appeals Division Decisions (WTDs):

- **Det. No. 98-226, 18 WTD 316 (1999)** (an Alaskan fishing corporation, whose principal offices are located in Washington, protests the Audit Division's denial of its refund claim).
- **Det. No. 98-178, 18 WTD 149 (1999)** (a commercial deep sea fishing business appeals instructions received from the Department that retail sales tax applies to its purchase and repair of custom-made trawl nets).

Attorney General Opinions (AGOs):

- **AGO 61-62 No. 153** (are sales of charter fishing boats subject to the state sales or use tax).

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Commercial Vessel Tax Brochure**
- **Fact Sheet on Fish Taxes**
- **Special Notice on the Taxability of the Charter Boat Industry (April 2002)**

**5. Review Recommendation:**

- |              |   |
|--------------|---|
| <u>  X  </u> | <b>Amend</b>  |
| _____        | <b>Repeal/Cancel</b> (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| _____        | <b>Leave as is</b> (Appropriate even if the recommendation is to incorporate the current information into another rule.)                              |
| _____        | <b>Begin the rule-making process for possible revision.</b> (Applies only when the Department has received a petition to revise a rule.)              |

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**This rule should be amended to incorporate legislation, incorporate information now available in other documents, correct a possible inaccurate or misleading term used in the rule, and to provide the information to readers in a more efficient and user-friendly**



manner. The specific recommendations are detailed in this document and in the previous review of this rule.

**6. Manager action:** Date: 6/4/03

AL Reviewed and accepted recommendation

Amendment priority:

     1  
     2  
  X   3  
     4